

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of Applications of)	
)	
MOBILE RELAY ASSOCIATES)	File Nos. 0002995043, 0002997996,
)	0003027621, 0003032483, 0003032485
Petitions To Dismiss or Deny Filed by National)	
Science and Technology Network, Inc.)	

ORDER

Adopted: March 13, 2008

Released: March 14, 2008

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

1. *Introduction.* We have before us the above-captioned applications filed by Mobile Relay Associates (MRA) for 470-512 MHz band channels at Black Mountain in Adelanto, California, and informal petitions filed by National Science and Technology Network, Inc. (NSTN) seeking the dismissal or denial of three of the applications. For the reasons set forth below, we will grant application FCC File No. 0003027621, and dismiss applications File Nos. 0002995043, 0002997996, 0003032483, and 0003032485.

2. *Background.* On January 19, April 16, and April 18, 2007, respectively, MRA filed applications for new Industrial/Business Pool stations at Black Mountain on frequency pairs 507/510.4375 MHz (FCC File No. 0002884148), 472/475.4125 MHz (FCC File No. 0002995043), and 472/475.0875 MHz (FCC File No. 0002997996). Application 0002884148 was granted on April 23, 2007 under Call Sign WQGU853.

3. On May 7, 2007, NSTN filed an informal petition to deny application 0002997996.¹ NSTN argued that MRA could not concurrently request more than one 470-512 MHz band frequency pair because Section 90.313(c) of the Commission's Rules requires that a licensee's assigned frequency pair be at full capacity before it may be assigned a second pair.² NSTN also argued that the application was filed in bad faith because MRA does not need additional capacity at this remote location, and MRA selected a frequency pair on which NSTN is authorized in the vicinity rather than a frequency pair on which MRA already is authorized elsewhere.³ On May 24, 2007, the Wireless Telecommunications Bureau, Mobility Division (Division) returned applications 0002995043⁴ and 0002997996⁵ for the frequency coordinator to explain how the frequency selections were consistent with Sections 90.173(b) and 90.313(c) of the Commission's Rules.⁶

4. On May 14, 2007, MRA filed application FCC File No. 0003027621 for a new

¹ Letter dated May 2, 2007 from Alan M. Lurya, counsel for NSTN, to Terry Fishel, Chief, Licensing and Technical Analysis Branch, Private Wireless Bureau.

² See *id.* at 1 (citing 47 C.F.R. § 90.313(c)).

³ See *id.* at 1-2.

⁴ See Return Letter Ref. No. 4567407.

⁵ See Return Letter Ref. No. 4567408.

⁶ 47 C.F.R. §§ 90.173(b), 90.313(c). Section 90.173(b) requires all applicants and licensees to cooperate in the selection and use of frequencies in order to reduce interference.

Industrial/Business Pool station at Black Mountain on frequency pair 507/510.850 MHz. On May 17, 2007, MRA filed application FCC File No. 0003032483 for a new Industrial/Business Pool station at Black Mountain on frequency pair 472/475.8125 MHz, and application FCC File No. 0003032485 to modify its license for Station WQGU853 to add frequency pairs 472/475.5125 MHz and 472/475.6125 MHz. On May 30, 2007, NSTN filed an informal petition to dismiss or deny applications 0003032483 and 0003032485, raising the same objections as it had with respect to application 0002997996.⁷ On June 7, 2007, MRA notified the Commission that it had constructed the facilities authorized under Call Sign WQGU853 as of May 2, 2007.⁸

5. On June 21 and July 23, 2007, MRA's frequency coordinator responded to the Division's return letters.⁹ It stated that the frequency selections were consistent with Section 90.173(b) because there were no co-channel or adjacent channel systems licensed or applications pending within sixty-four kilometers of the proposed transmitter,¹⁰ and with Section 90.313(c) because MRA had fully loaded Station WQGU853.¹¹

6. On September 20, 2007, NSTN filed another informal petition to dismiss or deny application 0003032485.¹² NSTN argued that Black Mountain is within its "exclusive zone of protection," because it is within the authorized mobile operating area of NSTN's co-channel Station WQCN660.¹³ On September 24, 2007, MRA responded Station WQCN660 is not entitled to such protection, because Station WQCN660 is authorized only for mobile operations.¹⁴

7. *Discussion.* Section 90.313(c) provides that a 470-512 MHz band frequency pair "may be reassigned at distances of 64 km. . . or more from the location of *base stations* authorized on that pair without reference to loading at the point of original installation."¹⁵ Station WQCN660 is authorized only for mobile operations, with no associated base station. Because the rule prohibits co-channel assignments only within sixty-four kilometers of base stations, we agree with MRA that NSTN's co-channel operations do not preclude grant of MRA's applications, even though Black Mountain is within sixty-four

⁷ See Consolidated Petition to Dismiss or Deny filed on May 30, 2007 by NSTN.

⁸ See FCC File No. 0003077235.

⁹ See Letter dated June 21, 2007 from Andre F. Cote, Senior Vice President, Wireless Solutions, Enterprise Wireless Alliance to Terry Fishel, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau (regarding application 0002995043); Letter dated July 23, 2007 from Andre F. Cote, Senior Vice President, Wireless Solutions, Enterprise Wireless Alliance to Terry Fishel, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau (regarding application 0002997996).

¹⁰ See 47 C.F.R. § 90.313(c) (prohibiting reassignment of a fully loaded 470-512 MHz channel within sixty-four kilometers).

¹¹ MRA also responded to the return letters, and NSTN responded to MRA's response. See Letter dated September 17, 2007 from Alan M. Lurya, counsel for NSTN, to Terry Fishel, Chief, Licensing and Technical Analysis Branch, Private Wireless Bureau; Letter dated September 20, 2007 from David J. Kaufman, counsel for MRA, to Terry Fishel, Associate Chief, Mobility Division, Wireless Telecommunications Bureau.

¹² See Petition to Dismiss or Deny Modification Application filed on September 20, 2007 by NSTN.

¹³ See *id.* at 1. NSTN also alleged, without substantiation, that MRA did not in fact construct the Black Mountain site. See *id.* at 2.

¹⁴ See Letter dated September 24, 2007 from David J. Kaufman, counsel for MRA, to Terry Fishel, Associate Chief, Mobility Division, Wireless Telecommunications Bureau.

¹⁵ See 47 C.F.R. § 90.313(c) (emphasis added).

kilometers of the center coordinates of one of Station WQCN660's operating areas.¹⁶

8. Section 90.313(c) also states, "A licensee will be required to show that an assigned frequency pair is at full capacity before it may be assigned a second or additional frequency pair."¹⁷ MRA therefore could not be assigned another 470-512 MHz band frequency pair at Black Mountain until it loaded the frequency pair assigned to Station WQGU853. Applications 0002995043 and 0002997996 were filed before MRA loaded Station WQGU853, so we will dismiss them as defective. Instead, we will grant the first application filed after MRA constructed Station WQGU853, application 0003027621. We will dismiss the other applications filed after MRA constructed Station WQGU853, applications 0003032483 and 0003032485, because MRA may not concurrently request multiple 470-512 MHz band frequency pairs at the same location. Only after the prior assigned frequency pair is loaded may another frequency pair be requested.

9. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.41 of the Commission's Rules, 47 C.F.R. § 1.41, the petitions to dismiss or deny modification application filed by National Science and Technology Network, Inc., on May 7, May 30, and September 20, 2007 ARE GRANTED, and applications FCC File Nos. 0002995043, 0002997996, 0003032483, and 0003032485 SHALL BE DISMISSED.

10. IT IS FURTHER ORDERED that application FCC File No. 0003027621 SHALL BE PROCESSED consistent with this *Order* and the Commission's Rules.

11. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Scot Stone
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau

¹⁶ See also *Mobile Relay Associates, Order*, 22 FCC Rcd 1600, 1601 ¶ 4 (WTB MD 2007) ("The spacing requirements of Section 90.313 are based upon non-temporary, *i.e.*, permanent, licensed facilities."), *aff'd*, *Memorandum Opinion and Order*, FCC 08-58 (rel. Feb. 27, 2008); *accord* *National Science and Technology Network, Inc., Order*, 22 FCC Rcd 11538, 11539 ¶ 4 (WTB MD 2007), *recon. pending*.

¹⁷ See 47 C.F.R. § 90.313(c); see also 47 C.F.R. § 90.35(e) ("Normally only one frequency, or pair of frequencies in the paired frequency mode of operation, will be assigned for mobile service operations by a single applicant in a given area. The assignment of an additional frequency or pair of frequencies will be made only upon a satisfactory showing of need . . .").